IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

OP.No. 35675 of 2002(V)

PETITIONERS:
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1. P.J.THOMAS, OPERATOR, KERALA WATER AUTHORITY, P.H.SECTION, ALATHUR.

2. M.SETHUMADHAVAN, OPERATOR, KERALA WATER AUTHORITY, P.H.SECTION, NEMMARA

3. V.S.ASSANAR, OPERATOR, KERALA WATER AUTHORITY, P.H.SECTION, ALATHUR

4. N.UNNI, OPERATOR, KERALA WATER AUTHORITY P.H.SECTION, ALATHUR.

5. J.WILSON, OPERATOR, KERALA WATER AUTHORITY, P.H.SECTION, KOLLAM

6. C.MANIAN, OPERATOR, KERALA WATER AUTHORITY, P.H.SECTION, PALAKKAD.

7. K.GOPINATHAN, KERALA WATER AUTHORITY, P.H.SECTION, CHITTUR.

8. C.UNNIKRISHNAN, KERALA WATER AUTHORITY, P.H.SECTION, ALATHUR

9. G.BALAKRISHNAN, KERALA WATER AUTHORITY, P.H.SECTION, NEMMARA.

BY ADV. SRI.KRB.KAIMAL
SRI.M.A. FIROZ

RESPONDENTS:
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1. KERALA WATER AUTHORITY, REPRESENTED
   BY ITS MANAGING DIRECTOR, VELLAYAMBALAM,
   TRIVANDRUM.

2. THE EXECUTIVE ENGINEER,
   KERALA WATER AUTHORITY, PUBLIC HEALTH DIVISION,
   PALAKKAD.

3. THE STATE OF KERALA, REPRESENTED
   BY ITS CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, TRIVANDRUM.16.

BY ADV. SRI.C.UNNIKRISHNAN, SC, KWA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP 35675/02

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE INTERVIEW MEMO AND THE APPOINTMENT ORDER ISSUED TO THE 1ST RESPONDENT.

EXT.P2 A TRUE COPY OF THE ORDER NO.KWA/HO/EI/7060(Vol.IV) DT.7.2.92

EXT.P3 TRUE COPY OF THE PROCEEDINGS NO.KWA/HO/EI/15106 (Vol.III)90 DT.7.9.94.

EXT.P4 TRUE COPY OF THE REPRESENTATION DT. 15.12.92.

EXT.P5 TRUE COPY OF THE REPLY NO.E1.5941/86, DT. 2.3.1993.

EXT.P6 A TRUE COPY OF THE REPRESENTATION DT.16.3.93 BEFORE THE 1ST RESPONDENT.

EXT.P7 TRUE COPY OF THE REPLY NO.W.A./H.O/E1/4898/93 DT. 19.7.94 ISSUED BY THE 1ST RESPONDENT.

EXT.P8 A TRUE COPY OF THE JUDGMENT DT. 5.9.01 IN O.P.NO.24655/90 PASSED BY THE HON'BLE COURT.

EXT.P9 TRUE COPY OF THE ATTENDANCE CERTIFICATE ISSUED TO THE 2ND PETITIONER DT. 29.11.2001.

EXT.P10 TRUE COPY OF THE COMMUNICATION NO.KWA/JB/E3/12058/2001 DT. 28/10/02 ISSUED TO THE FIRST PETITIONER.

1ST AND 2ND RESPONDENTS' EXTS:

EXT.R1(a) PHOTOCOPY OF THE G.O.(P) No.86/79/LA AND SWD DATED 21.5.1979.

Antony Dominic, J.

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O.P.No. 35675 of 2002

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Dated this the 14th day of March, 2007.

JUDGMENT

Petitioners, 9 in number, have approached this Court seeking to quash Ext.P10 and similar orders issued to them. They also seek a declaration that they are entitled to get the benefit of the Supreme Court judgment in the case of **Jacob M. Puthuparambil & Others** v. **Kerala Water Authority & Others** – A.I.R. 1990 S.C. 2228. The further relief sought is to regularise the services of the petitioners in their respective posts with effect from the date of their initial appointment as Operators with consequential benefits.

2. The facts as disclosed in the pleadings would show that soon after the constitution of the Kerala Water Authority with effect from 1.3.1984, based on the request made to the Employment Exchange, the petitioners were sponsored and were eventually selected and appointed as Pump Operators on daily wages under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, 1958. It is stated that such appointments were made on various dates during the period from 13.9.1984 to 24.11.1985. Ext.P1 is a communication issued to the first petitioner to appear for an interview in the process of selection

and Ext.P1(a) is an order appointing him for a period of 180 days or till the regular appointment through Public Service Commission is made, whichever is earlier. On this basis, the petitioners were engaged as CLR Pump Operators and in that position, they still continue in the Kerala Water Authority.

3. While so, the Supreme Court rendered judgment in **Jacob's Case** and claiming the benefit of para 17(2) directing that the services of workers employed by the Authority between 1st April, 1984 and 4th August, 1986 will be regularised with immediate effect if they possess the requisite qualifications for the post prescribed on the date of appointment of the concerned worker, the petitioners submitted Ext.P4 representation. The representation was considered by the first respondent and was rejected by Ext.P7 informing them that as their appointment was on daily wages, they are not entitled to the benefit of regularisation as ordered by the Supreme Court in the aforesaid judgment. Ext.P7 was called in question in O.P.No.24655 of 1990, which was disposed of by this Court by Ext.P8 judgment holding Ext.P7 to be a laconic order and set aside the same for that reason itself. It was directed that the respondents shall consider the claim of the petitioners afresh and pass appropriate orders thereon in accordance with law after affording an opportunity of hearing to the

petitioners. In pursuance to Ext.P8 judgment, the matter was reconsidered by the first respondent and by Ext.P10, they were informed that their request cannot be considered. It it is stated that legal opinion was sought from the Standing Counsel and on examining the same, the counsel was of the opinion that Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, 1958 is not applicable to the petitioners as they were engaged as CLR workers on daily wages initially. It is challenging Ext.P10 and seeking consequential reliefs that this Original Petition has been filed.

4. Counter affidavit has been filed by the respondents contending inter alia that the petitioners were engaged as CLR workers on daily wages and that they are not entitled to the benefit of the judgment in **Jacob's Case.** It is also contended that by Ext.R1(a), specific qualification for the post of Operators has been fixed and that the petitioners did not possess the requisite qualification for the post of Operators. In answer to the contentions in the counter affidavit, a reply affidavit has been filed by the petitioners. In paragraph 2, it is stated that all the petitioners possess the qualification of National Trade Certificate in the Trade of Machinist, awarded by the National Council for Training in Vocational Trades. The petitioners claim of having undergone the prescribed course of study, after passing

S.S.L.C. according to them, all the petitioners possessed this qualification and therefore, they satisfied the requirements as laid down by the Water Authority in their recruitment Rules.

5. At the time of hearing, Shri.K.R.B. Kaimal, Senior Counsel appearing for the petitioners would urge that initially, their claims were rejected on the basis that their entry into the service was on daily wages and for that reason, they were not entitled to the benefit of the Supreme Court judgment. Pursuant to the judgment of this Court, when their claims were considered, yet another reason has been assigned that they are not entitled to the benefit of Rule 9 of K.S. & S.S.R. It is stated that the Water Authority has again shifted its stand when it filed the counter affidavit and presently, it would appear that the contention of the Water Authority is that the petitioners are unqualified. Counsel contended that the Water Authority has been periodically shifting its stand as against the petitioners, although since 1984-85, the petitioners continue as Pump Operators in the Water Authority. Counsel for the respondents would urge that the Water Authority is justified in declining the benefit of the judgment of the Supreme Court for the reason that the petitioners are not possessing the basic qualification prescribed.

6. Two points arise for consideration. The first is whether the

petitioners are entitled to the benefit of Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, 1958. This contention appears to be covered by the judgment of this Court in **Kerala Water Authority** v. **Surendran** - 2006 (4) K.L.T. 983. Ext.P2 appointment order itself refers to Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, 1958. Making reference to the said Rule, it was in the case of the Water Authority itself that the Full Bench of this Court in the afore-mentioned judgment held as follows:

> "If the service of an employee is required for a short period and there is no sanctioned post, then appointments are made on daily wages basis, from open market, by the appointing authority without any reference to Employment Exchange or the legitimate channels for appointment. Fact that appointment was made through the Employment Exchange itself, shows that appointment was made to a vacancy in a sanctioned post. Resort to R.9 is permissible only when there is undue delay in filling a vacancy in accordance with the General/Special Rules. A vacancy which has to be filled up in accordance with the General/Special Rules will only be against a sanctioned post. Appointment was under R.9 (a)(i), on being sponsored by the Employment Exchange, entitled to get the benefit."

In view of the law as laid down by the Full Bench of this Court, there is no merit in the contention of the Water Authority that the

petitioners, who were also sponsored by the Employment Exchange, are not entitled to the benefit of Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, 1958. The other contention which remains to be resolved is regarding the qualification aspect. True, in order to claim the benefit of paragraph 17(2) of the Supreme Court judgment referred to above, the petitioners should possess the requisite qualifications for the post prescribed on the date of their appointment. It is contended by the Water Authority that in terms of Ext.R1(a), the qualification prescribed for the post of Operator is a pass in S.S.L.C. Examination or equivalent qualification and National Trade Certificate in Mechanic Motor Vehicle/Electrician. In the affidavit filed in reply to the counter affidavit, the petitioners submitted that they have passed the S.S.L.C. Examination and are also in possession of the qualification of National Trade Certificate Machinist Trade. It is also contended that the qualification possessed by them is what is prescribed by the Water Authority which was intimated to the Employment Exchange on the basis of which, the petitioners were sponsored, selected and appointed. According to them, the qualification possessed by them was informed to the Water Authority and based on their satisfaction in this respect, they were initially allowed to enter into the service of the Water Authority. However, the

fact remains that the question whether the petitioners satisfied the qualification prescribed by the Water Authority or not is a matter which has not been examined by the Water Authority till date. Therefore, in my view, the issue of qualification having been raised the contention in the counter affidavit and answered by the petitioners in their reply affidavit, this matter has to be considered by the Water Authority.

7. Accordingly, I direct that the respondents shall consider whether the petitioners possess the qualification prescribed for the post of Operators. If the petitioners do satisfy the qualification so prescribed, I see no reason why they shall not be given the benefit of paragraph 17(2) of the Supreme Court judgment in **Jacob's Case**. Accordingly, I quash Ext.P10 and direct the respondents to consider whether the petitioners satisfy the qualification prescribed in Ext.R1 (a) for the post of Operators. This exercise shall be completed within a period of two months from the date of receipt of a copy of this judgment. Petitioners are directed to serve a copy of this judgment on the first respondent for compliance.

The Original Petition will stand disposed of as above.

Antony Dominic
Judge.

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